REMARKS

In the non-final Office Action, the Examiner rejects claims 1, 5-8, 10, and 11 under 35 U.S.C. § 103(a) as unpatentable over ALDRED et al. (U.S. Patent No. 6,278,693) in view of NAGAMI et al. (U.S. Patent No. 6,515,999); and rejects claims 1-4 and 7-9 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-5 of U.S. Patent No. 6,335,927. Applicants respectfully traverse these rejections.[1] Claims 1-11 remain pending.

Claims 1, 5-8, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over ALDRED et al. in view of NAGAMI et al. Applicants respectfully traverse this rejection.

At the outset, Applicants submit that the rejection of claims 1, 5-8, 10, and 11 is improper because ALDRED et al. and NAGAMI et al. are not prior art with respect to the present application. The present application claims priority to U.S. Patent Application No. 08/751,917, filed November 18, 1996. Thus, the effective filing of the present application is November 18, 1996.

ALDRED et al. was filed on March 24, 1997, which is after Applicants' effective filing date. Applicants note that the Examiner may not rely on the benefit of the filing date of ALDRED et al.'s foreign application for prior art purposes (see, for example,

[1] As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

M.P.E.P. § 706.02(f)(1)). Thus, ALDRED et al. is not prior art under 35 U.S.C. § 103(a) with respect to the present application.

NAGAMI et al. was filed on April 1, 1997, which is after Applicants' effective filing date. Applicants note that the Examiner may not rely on the benefit of the filing date of NAGAMI et al.'s foreign application for prior art purposes (see, for example, M.P.E.P. § 706.02(f)(1)). Thus, NAGAMI et al. is not prior art under 35 U.S.C. § 103(a) with respect to the present application.

For at least the foregoing reasons, Applicants respectfully request that the rejection of claims 1, 5-8, 10, and 11 under 35 U.S.C. § 103(a) based on ALDRED et al. and NAGAMI et al. be reconsidered and withdrawn.

Claims 1-4 and 7-9 stand rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-5 of U.S. Patent No. 6,335,927. Applicants respectfully traverse this rejection.

Applicants filed a Terminal Disclaimer on August 15, 2005, in response to this same rejection in the Office Action, dated May 16, 2005. The final Office Action, dated November 8, 2005, indicates that the Terminal Disclaimer has been accepted by the Patent Office (final Office Action, pg. 2). The Terminal Disclaimer acts to overcome the double patenting rejection. Yet, the Examiner continues to maintain the double patenting rejection of claims 1-4 and has not included claims 7-9 in the Office Action. The Examiner does not provide an explanation as to why the rejection has been maintained. Applicants assume that this is an oversight by the Examiner. Withdrawal of the rejection of claims 1-4 and 7-9 based on obviousness-type double patenting is respectfully

requested.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Respectfully submitted,

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